IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

AND
THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 24523 of 2004

Between:

Smt. Thohida Sultana, W/o. Abdul Saleem
R/o. D.No. 44-1-25/4, Near Ramgopal Theatre,
Gunadala, Vijayawada- 520 004.

..... PETITIONER

AND

1. The Commissioner of Income Tax, (Appeals), Vijayawada.

2. The Commissioner of Income Tax, Vijayawada Circle, Vijayawada.

3. The Income Tax Officer, Ward-2(1), C.R. Buildings,

M.G. Road, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate order or direction more particularly one in the nature of Writ of mandamus declaring that the third respondent has no jurisdiction to initiate the assessment proceedings for the petitioner with respect to the year 2000-2001 in view of Clause (b) of Sub-Section (1) of Section 124 and the Circular of Joint Commissioner of Income Tax in F.No.Jurs/2001-2002, dated
14-09-2001 and (2) to further declare that the consequential orders passed by the second respondent dated 21-09-2003 and passed by the first respondent in Appeal No(s).0088/VJA/CITY(A)/VJA/03-04, dated 03-12-2004 are invalid inoperative, void, abinitio, without jurisdiction and in violation of principles of natural justice.

Counsel for the Petitioner: MR.P.R.PRASAD

Counsel for the Respondents: MR.J.V.PRASAD

SC FOR INCOME TAX

The Court made the following :

O R D E R

(Per Sri Justice M.H.S.Ansari)

Heard learned counsel for respective parties.

From the impugned order of the learned Commissioner of Income Tax (Appeals), it would appear that pursuant to the directions of this Court in W.P.No.25490 of 2002, dated 28.10.2004, whereby this Court gave a direction to the petitioner to raise all questions regarding the jurisdiction of the assessing officer before the appellate authority, the appellate authority decided the matter in favour of the revenue and against the assessee. Aggrieved by the said decision of the appellate authority, instant writ petition is filed questioning the jurisdiction of the assessing officer.

According to the petitioner-assessee, Income Tax Officer, Ward-II, Vijayawada has no jurisdiction to make assessments and that the jurisdiction over the petitioner vests with the Income Tax Officer, Ward-II(1), Vijayawada.

The impugned order is a comprehensive order disposing of the appeal against the order

under Section 144 of the Income Tax Act passed by the Income Tax Officer, Ward-II (1), Vijayawada, for the assessment years 2000-2001 and therein the jurisdiction of the Income Tax Officer has also been considered, as noticed supra, in pursuance of the directions of this Court dated 28.10.2004.

Admittedly, an appeal lies against the impugned order before the learned Income Tax Appellate Tribunal under Section 253 of the Act.

In such view of the matter, we are not inclined to consider the merits of the controversy, leaving it open to the petitioner to raise all such questions including that of jurisdiction before the appellate authority, if so advised.

With the observations as above, writ petition accordingly stands disposed of, keeping all questions open.

JUSTICE M.H.S.ANSARI

JUSTICE ELIPE DHARMA RAO

30th December, 2004

PGS

To

1. The Commissioner of Income Tax, (Appeals), Vijayawada.
2. The Commissioner of Income Tax, Vijayawada Circle, Vijayawada.
3. The Income Tax Officer, Ward-2(1), C.R. Buildings,

M.G. Road, Vijayawada.

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THE HON'BLE MR JUSTICE M.H.S. ANSARI

AND

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO. 24523 of 2004

(Per Sri Justice M.H.S.Ansari)

30th December, 2004